



Farm Debt Mediation Scheme Western Australia

Scheme Guidelines and Information Sheet

As approved by the RBDC on 8 December 2017

Contents

1.	Scheme overview	2
2.	Objective of the Scheme.....	2
3.	How will the Scheme operate?	2
4.	What are the Scheme priorities?.....	3
5.	Who can apply for mediation?	3
6.	What debt / issues do NOT qualify for mediation?.....	3
7.	How to apply	4
8.	Corrections	4
9.	False and misleading information	4
10.	What are the eligibility criteria for each party?	4
11.	Who will conduct the mediation?	5
12.	Who is the Small Business Development Corporation?.....	5
13.	What is the cost of Farm Debt Mediation?.....	6
14.	Who can help the parties prepare for Farm Debt Mediation?	6
15.	What resources are available?	7
16.	What happens to the application at the start?.....	7
17.	What is the Small Business Development Corporation's (SBDC) role?.....	7
18.	Who can attend the mediation?	8
19.	Personal information and disclosure of information in application	9
20.	Contact us	9
21.	Application Process for Farm Debt Mediation in Western Australia.....	10

Farm Debt Mediation Scheme (Scheme) at a glance

Key features are:

- A Scheme to assist farm and pastoral businesses resolve commercial debt disputes regarding loan agreements with their financial institution.
- Mediation is conducted by an independent and professional mediator in an impartial and safe environment.
- Most disputes can be resolved with one or two mediation sessions.
- Mediation sessions are confidential and information exchanged for the purposes of the mediation will not be shared with third parties. The Department of Primary Industries and Regional Development (DPIRD) and the Small Business Development Corporation (SBDC) will not disclose the information unless legally compelled to do so.

Should you read on?

For farm or pastoral businesses

To help decide whether your farm / pastoral business is eligible for the Scheme, you should answer yes to the following statements:

1. My farm or pastoral business is in dispute with my financial institution over the terms and conditions of a loan contract.
2. I have tried to resolve the dispute formally with my financial institution.
3. The dispute relates to farm or pastoral business commercial debt

For financial institutions

1. Is your organisation in dispute with a farm / pastoral business over the terms and conditions of a loan contract?
2. Have you tried to formally resolve the dispute with the farm / pastoral business previously?
3. Is the dispute over a farm related commercial debt?
4. Do you have a formal loan contract with the farm / pastoral business in relation to this dispute?

To be eligible you must:

1. Demonstrate that you:
 - meet the eligibility criteria to be assessed for the Scheme – (see Section 10 of the Scheme Guidelines);
 - are willing to attend facilitated mediation sessions with the other party;
 - are willing to contribute \$125 per mediation session towards the cost of mediation.
2. Complete and submit an application available at www.agric.wa.gov.au/rbdc

Farm Debt Mediation Scheme

These guidelines relate solely to the Farm Debt Mediation Scheme (Scheme) in Western Australia, a joint initiative of the Rural Business Development Corporation (RBDC) and the Small Business Development Corporation (SBDC).

1. Scheme overview

The RBDC has established and designed a Scheme to assist farm / pastoral businesses and financial institutions resolve disagreements when the parties fall into dispute about the businesses financial arrangements. The Scheme is administered by the RBDC with the assistance of the Department of Primary Industries and Regional Development, Western Australia (DPIRD). Intensive case management and mediation is provided by the Small Business Development Corporation of Western Australia (SBDC) on behalf of the RBDC.

2. Objective of the Scheme

The Scheme is designed to provide a method for farm / pastoral businesses and financial institutions to resolve disputes relating to the terms and conditions of a loan contract and associated commercial debt through mediation which is low cost, impartial and confidential. Mediation provides an opportunity for the farmer / pastoralist and financial institution to talk their issues through cooperatively and reach their own agreement with the assistance of a mediator. Legal and litigation costs can be lessened for all parties if an agreement can be reached at mediation.

3. How will the Scheme operate?

The Scheme can be triggered by the farm / pastoral business or the financial institution when a dispute between the parties arises. The party that triggers the request for mediation must demonstrate they have made an attempt to resolve their concerns prior to an application submitted to the RBDC. If this has not occurred, the application will be considered outside the Scheme's Guidelines. An on-line application to participate in mediation can be made to the RBDC via DPIRD's website.

Once a request for mediation has been made by the farmer / pastoralist or the financial institution, the other party will be notified of the application and a request made by RBDC (through DPIRD) for their voluntary consent to attend mediation. The SBDC will then be notified of the application. As participation in the Scheme is voluntary, if either party is not willing to participate in mediation, the application will not proceed. However, should both parties later decide to again access the Scheme, a new application can then be submitted.

Prior to the commencement of mediation arrangements, a dedicated Case Manager from the Alternative Dispute Resolution (ADR) Service of the SBDC will contact the farming / pastoralist business and financial institution. This is to establish whether the parties are prepared to present workable options (with supporting documentation) for discussion at the mediation and a degree of compromise exists. The Case Manager can assist either party with queries regarding preparation for the mediation.

The mediation will be conducted by the SBDC who will provide impartial and professional mediators through the ADR Service. The mediator will assist the parties to reach their own agreement by facilitating a constructive discussion of all issues relevant to the dispute in a co-operative manner.

The aim is for both parties to reach a consensus, and a legally binding agreement to finalise the dispute. Alternatively, the outcome from mediation can form the basis for a future formal agreement, and or parties can continue to negotiate externally to the mediation environment or consider other legal options.

4. What are the Scheme priorities?

The Scheme aims to achieve the following:

- Help parties communicate openly in a constructive and secure environment.
- Help parties clarify the main issues in a dispute and generate their own workable options to finalise the dispute.
- Facilitate the mediation process so it is fair and respectful.
- Assist in the preservation of the commercial relationship.
- Help parties to negotiate a mutually acceptable settlement of the dispute in a low cost and confidential manner, without the need for litigation.

5. Who can apply for mediation?

The Scheme is open to farm / pastoral businesses and financial institutions who are seeking resolution of a dispute regarding the terms and conditions of a loan agreement and associated commercial debt (farm business includes agricultural, horticultural, pastoral, apicultural or aquaculture industries). The Scheme is also open to lessees and sharefarmers.

Before attending mediation, the farmer / pastoralist will need to consider workable, realistic options to discuss at mediation. It is recommended a support network person such as an agricultural consultant, rural financial counsellor, accountant or a suitably qualified professional assists the farmer / pastoralist with this preparation – see Section 14 in these Scheme Guidelines).

6. What debt / issues do NOT qualify for mediation?

The following does not qualify for the Farm Debt Mediation Scheme:

- Any debt not issued by an authorised deposit taking institution in Australia as defined by the Australian Prudential Regulation Authority (APRA) in accordance with the *Banking Act 1959*, with the exception of Commonwealth Government concessional loans issued in WA by the Rural Business Development Corporation.

This includes

- Personal loans, family loans, credit card debt.
- Equipment finance issued by a non authorised deposit taking institution in Australia. Non-farm debt.
- Home loans, investment/margin loans.
- Creditor debts.
- Interest rate charging, bank fees, credit risk grading, valuation outcomes or bank staffing issues.

7. How to apply

Applications can be completed online via the DPIRD website:

www.agric.wa.gov.au/rbdc

8. Corrections

It is the responsibility of the applicant to ensure their application is complete and correct. The RBDC, SBDC, and DPIRD will not accept responsibility for any misunderstanding that may arise should the applicant provide false or misleading information in their application.

9. False and misleading information

Applicants should be aware that giving false or misleading information is a serious offence under the *Criminal Code Act 1995 (Cth)*. Also, under section 32(4) of the *Rural Business Development Corporation Act 2000*, it is an offence for an applicant to wilfully make a false statement or provide false information — this section has a provision for a penalty of \$10,000.

10. What are the eligibility criteria for each party?

The eligibility criteria are outlined below:

Eligibility Criteria – Farm and Pastoral Business applicants

To be eligible for the Scheme, the owner/s of a farm / pastoral business must:

- have farm / pastoral debt, with an authorised deposit taking institution in Australia as defined by the Australian Prudential Regulation Authority (APRA) in accordance with the *Banking Act 1959*. This can be confirmed at the following website www.apra.gov.au/adi/pages/adilist.aspx, or have a Commonwealth Government concessional loan issued in WA by the Rural Business Development Corporation, and
- not be a debt / issue as stated in Section 6 above, and
- have owned and operated the farm / pastoral business for at least the past three consecutive years; and
- operates as a sole trader, trust, partnership or private company; and
- be involved directly within the agricultural, horticultural, pastoral, apicultural or aquaculture industries; and
- be registered for tax purposes in Australia with an Australian Business Number (ABN) and registered for GST; and
- not a public company under the meaning of the Corporations Act 2001 (Cth); and
- under normal circumstances, at least one of the business owners contributes at least 75 per cent of his or her labour and derives at least 50 per cent of his or her income from the business; and
- provide evidence they have made an attempt to resolve the dispute or issue with the financier prior to the application under the Scheme (emails, letters, meeting notes, etc.).

Eligibility Criteria – Financial Institution applicants

To be eligible for the Scheme, the financial institution must:

- be an authorised deposit taking institution in Australia as defined by the Australian Prudential Regulation Authority (APRA) in accordance with the *Banking Act 1959*. This can be confirmed at the following website www.apra.gov.au/adi/pages/adilist.aspx, or
- be the Rural Business Development Corporation with a client who has a Commonwealth Government concessional loan issued in WA, and
- have provided their client with commercial farm / pastoral debt (which may include equipment finance debt) and excludes other debt and issues as outlined in Section 6 above; and
- as well as can be determined by the financier, the client's farm / pastoral business must be involved directly within the agricultural, horticultural, pastoral, apicultural or aquaculture industries; and
- as well as can be determined by the financier, their client must be registered for tax purposes in Australia with an Australian Business Number (ABN) and registered for GST; and not be a public company under the meaning of the *Corporations Act 2001 (Cth)*; and
- as well as can be determined by the financier, under normal circumstances, at least one of the farm / pastoral business owners contributes at least 75 per cent of his or her labour and derives at least 50 per cent of his or her income from the business; and
- have a formal written loan agreement in place with the farm / pastoral business that you are in dispute with; and
- have made an attempt to resolve the issue / dispute with the farm / pastoral business prior to triggering an application under the Scheme.

11. Who will conduct the mediation?

The mediation will be arranged by the Small Business Development Corporation (SBDC) of Western Australia. They will provide independent and professional mediators through the Alternative Dispute Resolution Service. A mediator, with a sound understanding of dispute resolution processes and suitable experience will be appointed by the SBDC to facilitate the session/s.

12. Who is the Small Business Development Corporation?

The SBDC is an independent statutory authority of the Western Australian government, and was established to facilitate the development and growth of small businesses in the State.

The SBDC has been the primary provider of advice and guidance for the small business sector in Western Australia since 1984. As part of SBDC's role, an ADR Service is available to assist disputing parties resolve business to business, business to government and internal partnership disputes in a low cost manner without the need for litigation.

13. What is the cost of Farm Debt Mediation?

The SBDC has a set fee structure for conducting mediation.

Both parties (the financial institution and the farm / pastoral business) will be required to pay a fee of \$125 per mediation session. The fee is to be paid to SBDC prior to the first session of the mediation. The fee structure for SBDC is detailed on the following webpage, and may vary from time to time:

<http://www.smallbusiness.wa.gov.au/the-cost-of-mediation/>

The SBDC is based in the Perth CBD and can organise venues for mediation in major regional centres across Western Australia. If both parties agree to mediation at a regional location, both parties will be required to pay the additional costs involved for travel of the SBDC (airfares, accommodation, hire car, meals and out of pocket expenses) on an agreed basis.

The SBDC is located at:

Level 2
Gordon Stephenson House
one40william building
(Corner of William Street and the Murray Street Mall)
140 William Street
Perth WA 6000

The SBDC has a network of third party service providers who can provide general advice to small businesses, details of which are available at:

<http://www.smallbusiness.wa.gov.au/businesslocal>

14. Who can help the parties prepare for Farm Debt Mediation?

Prior preparation is vital for constructive and full discussion at mediation to maximise the opportunity of reaching an agreement to finalise the dispute. The aim of preparation is to develop a number of options which ensures an informed discussion between the parties. It is preferable that options are supported by financial documentation.

While the mediator facilitates communication between the parties, the farmer / pastoralist and representative/s from the financial institution will become negotiators in their own right at the mediation.

In preparing for mediation, realistic options can only be developed by understanding the current and future financial viability of the business from the farmer / pastoralist viewpoint to enable workable and durable solutions to be canvassed. This may also include other income streams or commercial interests.

Ideally, prior to mediation the farmer / pastoralist will undertake a review of the businesses financial affairs and prepare a number of options that can be presented at mediation with supporting financial data and evidence (cash flows, budgets, business plan, consultant's report or report from an independent review etc.). It is recommended that both parties consider at least three options that could reasonably resolve the dispute.

During the mediation, it is also important that both parties are prepared to listen to the other side and are willing to co-operatively consider options with a degree of compromise. Mediation can achieve an agreement if parties are prepared and flexible - do you consider that your option is reasonable and therefore acceptable to

the other party? Sticking to one and only one viewpoint and not being flexible reduces the possibility of a positive outcome from mediation.

15. What resources are available?

There are a number of resources that can assist farming / pastoral businesses prepare for mediation. The RBDC recommends that any farm / pastoral business applying for mediation have someone help them. Help can be sought from one of the resources below to discuss the application beforehand. The support network person will ideally assist the business throughout the process and attend mediation with farmer / pastoralist.

The resources are;

- Rural Financial Counselling Service (WA) – this is a free service to farm and pastoral businesses in Western Australia. Phone – 1800 612 004 (Freecall).
- Agricultural consultant.
- Accountant / financial / business adviser or a suitably qualified professional.

If a legal issue is to be canvassed at mediation, it may be beneficial for the farmer / pastoralist to have obtained legal advice on this issue prior to the mediation. This will enable the farmer or pastoralist to negotiate from a fully informed perspective at the mediation. Legal representatives are also welcome to attend the mediation.

As a resource, the SBDC does offer advice and tips on its website on how to prepare for mediation. The RBDC recommends that farmers and pastoralists review this information in conjunction with their support resource prior to an application.

<https://www.smallbusiness.wa.gov.au/i-am-in-dispute/preparing-mediation-session>

16. What happens to the application at the start?

Once an application for the Scheme has been received by the RBDC, from either the farmer /pastoralist, or, the financier,

- the application is checked for completeness,
- the 'other' party is invited to voluntarily participate in the mediation,
- the 'other' party is given 10 business days to respond,
- once the two parties have agreed to voluntarily engage in the mediation, the RBDC will forward the application onto the SBDC to enter their mediation process,
- from this point on, the RBDC has no further involvement in the application other than to know if it has or has not been resolved (but not how).

17. What is the Small Business Development Corporation's (SBDC) role?

The application will be allocated to a dedicated Case Manager at the SBDC to provide Intensive Case Management (ICM). Case Managers are experienced in assisting clients prepare for mediation and will guide the parties to ensure they are confident on the day. The SBDC realises the importance of parties optimising the opportunity for an agreement to be achieved at mediation.

As the referral has resulted from an application from one party only, the Case Manager will request the second party to submit an application for mediation to the SBDC.

The Case Manager may contact the farmer / pastoralist or financial institution to request additional information, provide guidance or meet with the parties to ensure they are adequately prepared for mediation. Naturally, all responsible parties must consent to voluntarily participating in mediation as a legally binding agreement can result if consensus is achieved.

At the request of a Case Manager, it is also expected financial institutions will provide any requested background documents to assist in clarifying the dispute. The Case Manager provides a summary of the dispute and background information to the mediator.

A payment of \$125 per party per session will be requested and the SBDC will appoint a mediator and contact the parties to arrange a mutually convenient time for the mediation. A mediation session is typically four hours or more and a second session can be requested by the parties to progress to an agreement.

For any queries, the parties can contact the Case Manager following the mediation. If a result is not achieved by the end of the second session, it is unlikely a consensus can be achieved and the mediation will be closed. The parties can continue to negotiate externally to the Scheme or consider other legal avenues to resolve the dispute.

A mediation session at the SBDC typically consists of:

- An introduction and explanation of the mediation process by the mediator including confidentiality requirements. The parties sign an agreement to mediate.
- An uninterrupted opening statement made by each party.
- Creation of an agenda of the issues to be discussed.
- Exploration of the issues including discussion based on any information presented by the parties to one another.
- Confidential private sessions with each party which can occur at any time during the mediation.
- Generation of options by the parties to resolve the issue/s in dispute.
- Assistance by the mediator to canvass whether the options are workable and durable.
- If a mutually acceptable agreement is reached, the parties draft and sign an agreement retaining a copy for their records.
- Closing of the session by the mediator.

For further information on preparing for mediation and the information required contact the RBDC (see Section 16 of the Guidelines).

18. Who can attend the mediation?

For the farm / pastoral business responsible parties must be available to participate, negotiate fully and consent to an agreement should consensus be achieved at mediation. Responsible parties include:

- The owners of the farming / pastoral business whether it is operated individually, in partnership, incorporated or linked to a trust arrangement.
- Borrower/s detailed on all loan contracts being discussed at the mediation.

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- Title holders of land secured to loan contracts.
 - Guarantors linked to loan contracts.
 - Other security holders.

It is also recommended that the following people attend mediation as a priority:

- Family members supporting the owners of the farming or pastoral business.
- An Agricultural or business consultant, or a Rural Financial Counsellor or other suitably qualified professional can also attend with the farmer / pastoralist.
- Legal representatives are also welcome to attend.

For the financial institution, it is recommended that the following people attend as a priority:

- Account Manager and / or Regional Manager who has authority to negotiate fully at the mediation and enter into an agreement on behalf of the financial institution.
- A representative of the financier's credit department.

19. Personal information and disclosure of information in application

DPIRD and the SBDC may collect personal information from applicants for the purposes of administration, evaluation and assessment of an application, on behalf of RBDC. If the relevant personal information is not provided by applicants, DPIRD, RBDC, and the SBDC will be unable to assess the application for this Scheme.

Personal information may be disclosed to other Western Australian Government agencies. Personal information will be used and stored in accordance with the DPIRD and SBDC Privacy Policy.

Applicants may contact DPIRD and or the SBDC about their personal information or to make a complaint using the contact details below.

20. Contact us

Phone: Freecall 1800 198 231
Email: rbdw.loans@dpiird.wa.gov.au
Website: www.agric.wa.gov.au/rbdc
Postal: Farm Debt Mediation
Rural Business Development Unit, DPIRD
Locked Bag 4
Bentley Delivery Centre WA 6398

21. Application Process for Farm Debt Mediation in Western Australia

